

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

GENBAND US LLC

Plaintiff,

v.

METASWITCH NETWORKS LTD;  
METASWITCH NETWORKS  
CORP.,

Defendants.

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Civil Action No. 2:14-cv-33

JURY TRIAL DEMANDED

**JOINT PROPOSED VERDICT FORM**

Plaintiff Genband US LLC (“Genband”) and defendants Metaswitch Networks Ltd and Metaswitch Networks Corp. (collectively, “Metaswitch”) hereby submit the following jointly proposed verdict form. The joint verdict form identifies competing proposed questions where appropriate. The parties’ disagreements primarily concern three issues.

1. The parties agree that the infringement questions should be product-specific. The disagreement is whether the product names are sufficient, as Genband requests, or whether the questions should ask about model numbers, as Metaswitch requests.

2. Metaswitch requests that the jury be asked specific questions about patent marking, practicing products, and Metaswitch’s CableLabs and FRAND license defenses. Genband contends a single damages question is sufficient, and the detailed questions that Metaswitch requests are unnecessary.

3. Metaswitch asks that the jury be asked separate damages questions for each patent so that the basis for the jury’s damages award is clear and a retrial on damages can be

avoided if one or more liability findings are vacated. Genband contends that a single question is sufficient and less complicated for the jury.

Dated January 14, 2016

Respectfully submitted,

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Dated: January 14, 2016

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# **1. Infringement**

## **GENBAND’S PROPOSED INFRINGEMENT QUESTIONS**

### **A. U.S. Patent No. 6,791,971**

Has Plaintiff Genband proven by a preponderance of the evidence that the following products of Defendant Metaswitch infringe the following claims of the ’971 Patent?

In each cell of the table below, please answer with “Yes” (for infringement) or “No” (for no infringement).

<b>Claim Number</b>	<b>Service Broker</b>	<b>MetaSphere Call Feature Server</b>	<b>Integrated Softswitches</b>
Claim 70 ( <i>If your answer is “No” for this claim, mark “No” for Claim 80 below</i> )			
• Claim 80			
Claim 92			

### **B. U.S. Patent No. 6,885,658**

Has Plaintiff Genband proven by a preponderance of the evidence that the following products of Defendant Metaswitch infringe the following claims of the ’658 Patent?

In each cell of the table below, please answer with “Yes” (for infringement) or “No” (for

no infringement).

Claim Number	MetaSphere Call Feature Server	Integrated Softswitches
Claim 1		
Claim 11		

**C. U.S. Patent Nos. 6,934,279 and 7,995,589**

Has Plaintiff Genband proven by a preponderance of the evidence that the following products of Defendant Metaswitch infringe the following claims of the '279 and '589 Patents?

In each cell of the table below, please answer with "Yes" (for infringement) or "No" (for no infringement).

Claim Number	Accession & MTAS	CommPortal & MTAS
'279, Claim 25		
'589, Claim 15		

**D. U.S. Patent No. 7,047,561**

Has Plaintiff Genband proven by a preponderance of the evidence that the following products of Defendant Metaswitch infringe the following claims of the '561 Patent?

In each cell of the table below, please answer with "Yes" (for infringement) or "No" (for no infringement).

Claim Number	Perimeta SBC
Claim 6	
Claim 17 ( <i>If your answer is "No" for this claim, mark "No" for Claim 20 below</i> )	
• Claim 20	

**E. U.S. Patent Nos. 7,184,427 and 7,990,984**

Has Plaintiff Genband proven by a preponderance of the evidence that the following

products of Defendant Metaswitch infringe the following claims of the '427 and '984 Patents?

In each cell of the table below, please answer with "Yes" (for infringement) or "No" (for no infringement).

<b>Claim Number</b>	<b>Universal Media Gateways</b>	<b>Integrated Softswitches</b>
'427, Claim 1		
'984, Claim 1		

**METASWITCH'S PROPOSED INFRINGEMENT QUESTIONS**

- For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has infringed the following claims of the '971 patent? Answer for each accused product.

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no infringement). If your answer is "No" for this claim, mark "No" for Claim 80.

	<b>U.S. Patent No. 6,791,971</b>		
<b>Accused Metaswitch Product</b>	<b>Claim 70</b>	<b>Claim 80</b>	<b>Claim 92</b>
Service Broker			
Metasphere Call Feature Server			
VP2510			
VP3500			
VP3510			
VP6010			
VP6050			

- For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has infringed the following claims of the '658 patent? Answer for each accused product.

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no

infringement).

<b>U.S. Patent No. 6,885,658</b>		
<b>Accused Metaswitch Product</b>	<b>Claim 1</b>	<b>Claim 11</b>
Metasphere Call Feature Server		
VP2510		
VP3510		
VP6010		
VP6050		
MG2510		
MG3510		
MG6010		
MG6050		

3. For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has infringed the following claim of the '279 patent? Answer for each accused product.

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no infringement).

<b>U.S. Patent No. 6,934,279</b>	
<b>Accused Metaswitch Product</b>	<b>Claim 25</b>
Metasphere Multiservice Telephony Application Server with Metasphere Accession Products	
Metasphere Multiservice Telephony Application Server with Metasphere CommPortal Products	

4. For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has infringed the following claims of the '561 patent?

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no infringement).

If your answer is "No" for Claim 17, mark "N" for Claim 20.

<b>U.S. Patent No. 7,047,561</b>			
<b>Accused Metaswitch Product</b>	<b>Claim 6</b>	<b>Claim 17</b>	<b>Claim 20</b>
Metaswitch Perimeta Products			

5. For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has infringed the following claim of the '427 patent? Answer for each accused product.

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no infringement).

<b>U.S. Patent No. 7,184,427</b>	
<b>Accused Metaswitch Product</b>	<b>Claim 1</b>
VP2510	
VP3500	
VP3510	
VP6010	
VP6050	
MG2510	
MG3510	
MG6010	
MG6050	

6. For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has directly infringed the following claim of the '984 patent? Answer for each accused product.

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no infringement).

<b>U.S. Patent No. 7,990,984</b>	
<b>Accused Metaswitch Product</b>	<b>Claim 1</b>
VP2510	
VP3500	
VP3510	
VP6010	
VP6050	
MG2510	
MG3510	
MG6010	
MG6050	

7. For each of the following products, has Genband proven by a preponderance of the evidence that Metaswitch has infringed the following claim of the '589 patent? Answer for each accused product.

Please answer in each cell with a "Y" for "yes" (for infringement), or with a "N" for "no" (for no infringement).

<b>U.S. Patent No. 7,995,589</b>	
<b>Accused Metaswitch Product</b>	<b>Claim 15</b>
Metasphere Multiservice Telephony Application Server with Metasphere Accession Products	
Metasphere Multiservice Telephony Application Server with Metasphere Commportal Products	



**2. Invalidity****A. Anticipation**

Has Defendant Metaswitch proven by clear and convincing evidence that any of the following claims is invalid as anticipated? Check either “Yes” or “No” for each claim.

<b>U.S. Patent No. 6,791,971</b>		
<b>Claim Number</b>	<b>Yes (Invalid)</b>	<b>No (Not Invalid)</b>
Claim 70 ( <i>If your answer is “No” for this claim, mark “No” for Claim 80 below</i> )		
• Claim 80		
Claim 92		

<b>U.S. Patent No. 6,885,658</b>		
<b>Claim Number</b>	<b>Yes (Invalid)</b>	<b>No (Not Invalid)</b>
Claim 1		
Claim 11		

<b>U.S. Patent No. 6,934,279</b>		
<b>Claim Number</b>	<b>Yes (Invalid)</b>	<b>No (Not Invalid)</b>
Claim 25		

U.S. Patent No. 7,047,561		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 6		
Claim 17 ( <i>If your answer is "No" for this claim, mark "No" for Claim 20 below</i> )		
<ul style="list-style-type: none"> <li>Claim 20</li> </ul>		

U.S. Patent No. 7,184,427		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 1		

U.S. Patent No. 7,990,984		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 1		

U.S. Patent No. 7,995,589		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 15		

**B. Obviousness**

Has Defendant Metaswitch proven by clear and convincing evidence that any of the following claims is invalid as obvious? Check either “Yes” or “No” for each claim.

<b>U.S. Patent No. 6,791,971</b>		
<b>Claim Number</b>	<b>Yes (Invalid)</b>	<b>No (Not Invalid)</b>
Claim 70 ( <i>If your answer is “No” for this claim, mark “No” for Claim 80 below</i> )		
• Claim 80		
Claim 92		

<b>U.S. Patent No. 6,885,658</b>		
<b>Claim Number</b>	<b>Yes (Invalid)</b>	<b>No (Not Invalid)</b>
Claim 1		
Claim 11		

<b>U.S. Patent No. 6,934,279</b>		
<b>Claim Number</b>	<b>Yes (Invalid)</b>	<b>No (Not Invalid)</b>
Claim 25		

U.S. Patent No. 7,047,561		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 6		
Claim 17 ( <i>If your answer is "No" for this claim, mark "No" for Claim 20 below</i> )		
<ul style="list-style-type: none"> <li>Claim 20</li> </ul>		

U.S. Patent No. 7,184,427		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 1		

U.S. Patent No. 7,990,984		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 1		

U.S. Patent No. 7,995,589		
Claim Number	Yes (Invalid)	No (Not Invalid)
Claim 15		

**METASWITCH'S REQUESTED PRACTICING PRODUCT QUESTIONS**

8. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '971 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 6,791,971</b>	
<b>Genband Product</b>	<b>Claim 70</b>
C3	
C15	
C20	

9. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '658 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 6,885,658</b>	
<b>Genband Product</b>	<b>Claim 11</b>
C3	
C20	

10. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '279 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 6,934,279</b>	
<b>Genband Product</b>	<b>Claim 25</b>
C15	
C20 and EXPERiUS	

11. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '561 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 7,047,561</b>	
<b>Genband Product</b>	<b>Claim 17</b>
C15	
QUANTiX	
SPiDR	

12. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '427 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 7,184,427</b>	
<b>Genband Product</b>	<b>Claim 1</b>
C15	
QUANTiX	
SPiDR	

13. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '984 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 7,990,984</b>	
<b>Genband Product</b>	<b>Claim 1</b>
G6	
G9	

14. For each of the following Genband products, has Genband proven by a preponderance of the evidence that the Genband product practices the following claim of the '589 patent?

Please answer in each cell with a "Y" for "yes", or with a "N" for "no".

<b>U.S. Patent No. 7,995,589</b>	
<b>Genband Product</b>	<b>Claim 15</b>
C15	
C20 and EXPERiUS	

**METASWITCH'S REQUESTED CABLELABS/FRAND QUESTIONS<sup>1</sup>**

15. Has Metaswitch shown by a preponderance of the evidence that Metaswitch has a royalty-free license to the following patents under the CableLabs PacketCable agreement?

If your answer is "Yes" for any patent listed below, there are no damages for that patent.

U.S. Patent No. 6,791,971 ☐ Yes ☐ No

U.S. Patent No. 6,934,279 ☐ Yes ☐ No

U.S. Patent No. 7,047,561 ☐ Yes ☐ No

U.S. Patent No. 7,995,589 ☐ Yes ☐ No

16. Has Metaswitch shown by a preponderance of the evidence that it is entitled to a FRAND license for the following patents?

U.S. Patent No. 6,791,971 ☐ Yes ☐ No

U.S. Patent No. 6,934,279 ☐ Yes ☐ No

U.S. Patent No. 7,047,561 ☐ Yes ☐ No

U.S. Patent No. 7,995,589 ☐ Yes ☐ No

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<sup>1</sup> Genband's Position: On top of Genband's general objections to these questions, Genband objects that the instruction is misleading because any license under the CableLabs IPR agreement applies only to claims. *See* PX0272 at 2 (§ 1(e)) (defining "Licensed Claims"; § 4(a) (granting license only to licensed claims). Genband has similar objections to the FRAND questions by patent, instead of by claim. Each claim is a separate invention, and Metaswitch has not alleged essentiality for all the asserted claims of the patents it lists in this question. These issues are spelled out in more detail in the parties' proposed final jury instructions.

Metaswitch's Position: Metaswitch disagrees that Genband's licensing and FRAND obligations are claim specific. The licensing obligations extend to "Intellectual Property Rights" and "essential patents."



17. If you answered “Yes” to Question 23 for any patent, what is the FRAND rate or royalty?

U.S. Patent No. 6,791,971

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U.S. Patent No. 6,934,279

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U.S. Patent No. 7,047,561

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U.S. Patent No. 7,995,589

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**3. Damages**

**Answer the following question on damages, if you found at least one claim of one patent both infringed (“Yes” answer to Question 1) and not invalid (“No” answers to Questions 2A and 2B); otherwise do not answer this question.**

**GENBAND’S REQUESTED DAMAGES QUESTION**

What sum of money do you find from a preponderance of the evidence would fairly and reasonably compensate Plaintiff Genband for Defendant Metaswitch’s infringement of the patent claims that you have found were infringed?

**METASWITCH’S REQUESTED DAMAGES QUESTIONS**

18. If you have found at least one claim of any of the asserted patents to be infringed and not invalid, has Genband proven by a preponderance of the evidence that it complied with its obligation to mark its products that practice the patent with the patent number? Answer “Yes” or “No” for each patent.

U.S. Patent No. 6,791,971

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U.S. Patent No. 6,885,658

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U.S. Patent No. 6,934,279

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U.S. Patent No. 7,047,561

\_\_\_\_\_

U.S. Patent No. 7,184,427

\_\_\_\_\_

U.S. Patent No. 7,990,984

\_\_\_\_\_

U.S. Patent No. 7,995,589

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19. If you have found at least one claim of any of the asserted patents to be infringed and not invalid, what total damages do you find for Genband, if any for each patent?

If you answered "Yes" to question 22 for a patent, there are no damages for that patent and you should award zero damages for that patent.

U.S. Patent No. 6,791,971 \_\_\_\_\_

U.S. Patent No. 6,885,658 \_\_\_\_\_

U.S. Patent No. 6,934,279 \_\_\_\_\_

U.S. Patent No. 7,047,561 \_\_\_\_\_

U.S. Patent No. 7,184,427 & 7,990,984 \_\_\_\_\_

U.S. Patent No. 7,995,589 \_\_\_\_\_

**Stop. You have completed your deliberations. The foreperson must date and sign this verdict on the lines below. After the foreperson has done so, please inform the security officer you have completed your deliberations. Thank you.**

**DATE:** \_\_\_\_\_

**FOREPERSON:** \_\_\_\_\_